

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE AMIN-UD-DIN KHAN

Civil Petition No.1582 of 2021

Against judgment dated 04.02.2021 of Lahore High Court, Lahore, passed in Writ Petition No.6786 of 2021.

Hamid Ullah & others

Petitioner(s)

Versus

Federation of Pakistan & others

Respondent(s)

For the Petitioner(s):

Ms. Ayesha Hamid, ASC
(via video link from Lahore)

For the Respondent(s):

Ch. Muhammad Umar, ASC (PMC)
Mr. Imran Muhammad Sarwar, ASC (UHS)
(via video link from Lahore)

Date of hearing:

08.07.2021

ORDER

IJAZ UL AHSAN, J-. The petitioners seek leave to appeal against a judgment of the Lahore High Court, Lahore dated 04.02.2021. Through the impugned judgment, a constitutional petition (*W.P.No.6786 of 2021*) filed by the petitioners seeking an additional fifth chance in their professional medical examination was dismissed.

2. The petitioners were MBBS and BDS students, who were studying in various Medical Colleges/Institutions which are affiliated with the University of Health Sciences, Lahore ("UHS"). They sat for their professional examination for the year ending 2019 in January, 2020 in which they were unable to clear certain subjects. They were afforded an opportunity to

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appear in supplementary examination for the said subjects. However, they again failed to qualify. On account of Covid-19 Pandemic, the Supplementary Examination originally scheduled for March, 2020 were delayed/postponed till further notice and the date sheet for the said examination was changed multiple times. The said examination, according to the record, was held in September – October, 2020. However, unfortunately the petitioners yet again failed to qualify for the forth time. In terms of the regulations governing various Medical Colleges, in view of the fact that the petitioners had failed to qualify the relevant examination despite availing four chances, they were expelled from their respective Medical Colleges/Institutions. They were aggrieved of the same and approached the Principals/Heads of their respective Colleges/Institutions as well as UHS seeking a fifth chance to appear and qualify their professional examination. This was declined and the Institutions refused to allow any additional chance to the petitioners to clear the examination on the ground that a policy of maximum of four chances to qualify a professional examination was being followed since long and still held the field.

3. The record indicates that having failed to convince the Principals of Medical Colleges/ Institutions as well as the VC of UHS, the petitioners approached the Governor of Punjab in his capacity as Chancellor of UHS for similar relief. The Governor/Chancellor referred the matter to UHS with a

recommendation that the matter may be considered on compassionate grounds. It however appears that after due consideration of the respective cases of the petitioners, UHS declined to grant relief. Consequently, the petitioners approached the Lahore High Court in its constitutional jurisdiction by way of Writ Petition bearing No.69287 of 2020. They sought a direction to the Respondents that they may be granted an additional chance to clear the examination. Vide order dated 29.12.2020, the Writ Petition was disposed of by the High Court on the request of learned counsel for the petitioners that a copy of the same may be remitted to Pakistan Medical Commission ("PMC") with a direction to treat the petition as a representation and decide the same in accordance with law.

4. It appears that the matter was considered by the PMC and vide an order dated 14.01.2021 purportedly issued by a Vice President of PMC, it was recommended to UHS that the cases of the petitioners may be considered sympathetically and on compassionate grounds. It further appears from the record that UHS at that stage took the stance that since the matter of an additional chance did not lie within the domain of PMC and regulations already existed and held the field to the effect that a maximum of four chances would be granted, the recommendations made by the PMC could not be given effect. Even today before us PMC has supported the stance of UHS

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and conceded that the question of chances/additional chances is not within its domain and decisions/policies in this regard are required to be made/taken by the respective Colleges/Institutions and their respective regulatory bodies/authorities/university which has granted them affiliation. Aggrieved of refusal on the part of UHS/Medical Colleges, the petitioners once again approached the High Court in its constitutional jurisdiction by way of Writ Petition bearing No.6786 of 2021 seeking the same relief. This time, the High Court declined to interfere in the matter after hearing the PMC which took the stance that its recommendations did not relate to the petitioners and in any event the question of additional chance lay within the domain of the respective Medical Colleges and their controlling Universities. The petitioners are dissatisfied with the said order and have sought leave to appeal against the same.

5. The learned ASC for the petitioners submits that the learned High Court has erred in law in coming to the conclusion that the recommendations of PMC were correctly ignored by University of Health Sciences. She maintains that being the premier regulatory body, the recommendations made by the PMC should have carried considerable weight with UHS and should have been duly implemented by the UHS. She further maintains that the earlier order of the Lahore High Court had not been complied with insofar as no meaningful deliberation on

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the question of additional chance was undertaken either by PMC or UHS. As such, the learned High Court acted in undue haste in dismissing their constitutional petition. She further submits that the order of the High Court disregards PMC's very mandate and purpose i.e. of establishment of a uniform minimum standard of higher qualification in medicine and dentistry across Pakistan. She argues that being a federal entity having countrywide reach PMC is placed at a higher pedestal compared to colleges/universities and provincial regulatory bodies. She emphasises that any recommendations given by it to UHS should have been implemented in toto. She has vehemently argued that the order of the High Court contains obvious factual errors and is patently unreasonable in view of the fact that it fails to take into account the exceptional and unprecedented circumstances brought forth by the Covid-19 Pandemic which has had a grave effect on the ability of the students to have access to the Institutions and Teachers. She has stressed the point that the ability of the petitioners to prepare for the supplementary examination was seriously affected not only on account of weak technological infrastructure in some urban and rural areas but also due to the students living in situations which were not conducive to their effective learning. She finally argues that the recommendations of the Board of Studies ("BoS") relied upon by UHS as well as PMC are of no legal consequence as the BoS does not enjoy

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any legal status or sanction and is not an entity provided for or constituted under the statute of the UHS.

6. The learned counsel for the Respondents on the other hand has taken us through various notifications issued by UHS from time to time starting from a notification dated 06.04.2016 which clearly and categorically provides that any student who fails to clear his/her professional examination in four chances availed or un-availed shall not be eligible for continuation of his/her medical/dental studies. He has further drawn our attention to an earlier notification of UHS dated 19.04.2008 which also provides that students would be granted a maximum of four chances to clear their first professional examination. He also submits that the BoS had to be constituted on account of an order passed by the Governor/Chancellor to reconsider the matter and examine the cases of the petitioners on compassionate grounds. He has pointed out that the BoS discussed and examined the matter threadbare from all angles including the fact that one of the chances had to be availed while the institutions were closed for a considerable period of time on account of the Pandemic lockdown. He points out from the minutes of the meeting of the BoS that it unanimously came to the conclusion that there was no provision in the rules and regulations to grant any additional chance. He also points out that the power to grant additional chances totally vests with the Institutions/their provincial

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regulatory authorities/university with which various colleges are affiliated as has been admitted by learned counsel for PMC. As such, the stance of UHS has been consistent that in the matter of professional examination involving medical and dental education an additional chance after four chances cannot be granted. And it is a policy matter in which superior Courts have been extremely careful, cautious and reluctant (*except in exceptional circumstances*) to interfere. In this context, the learned counsel has relied upon judgments of this Court reported as Asif Mushtaq v. District Judge (2006 SCMR 701), Siraj Ahmad v. Collector of Examinations, University of the Punjab (1999 SCMR 1552), VC University of Punjab v. Maria Hidayat Khan (2007 SCMR 1231) and University of the Punjab v. Samea Zafar Cheema (2001 SCMR 1506).

7. Having heard the learned counsel for the parties and going through the record, we find that in the matter of granting additional chance(s) for passing professional examination over and above the four chances available to students under the relevant regulations fell within the domain of the Pakistan Medical & Dental Council. However, on repeal of the PM&DC Ordinance and promulgation of the Pakistan Medical Council Act, 2020, the power now vests with the respective Medical Colleges/Medical Universities/UHS or their regulatory bodies at the Provincial level. The stance taken by UHS which is the relevant authority in the context of granting

chances and additional chances to pass professional examination is clear, categorical and quite unambiguous. Although recommendations were made by PMC pursuant to a direction passed by the Lahore High Court, the said recommendations had no binding force. As such, the UHS was not under any legal obligation to reconsider the matter on any ground. The argument of the learned counsel for the petitioners that being the premier regulatory authority for medical education/profession, the recommendations of PMC should have been given due weight by the Respondents may look attractive at the first glance but loses its sheen upon closer scrutiny for the reason that such recommendation has no statutory backing or basis. Further, the learned ASC for PMC has clearly and categorically stated before us (obviously on instructions) that the question of chances/additional chances falls within the exclusive domain of the respective Medical Colleges and the Universities they are affiliated with. As such, the recommendation for a fifth chance had no binding or even persuasive value. It is unclear why this matter was referred to PMC in the first place knowing that it had no power or authority in the matter. It is equally unclear why and on what basis did PMC issue the so-called "recommendations" which act was not anchored in any legal foundation.

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8. The argument of learned ASC for UHS that regulations relating to grant of a maximum of four chances

already existed from 2008 to 2016 shows that a legal framework was already in place which prevented the UHS to grant any additional chance to the petitioners. In this context, we have also gone through the following documents:

- i. 19.04.2008 – Notification of University of Health Sciences regarding students who fail their exams after four (04) tries.
- ii. 06.04.2016 – Notification of University of Health Sciences regarding students who fail their exams after four (04) tries.
- iii. 23.10.2020 – Letter of Pakistan Medical Commission regarding Maximum number of chances for appearing in MBBS/BDS exams.
- iv. 03.11.2020 – Minutes of the 40th meeting of Board of Studies of University of Health Sciences.
- v. 12.11.2020. – Dismisses W.P regarding the policy decision of universities on the subject of examinations.
- vi. 16.11.2020 – Letter of the Governor Punjab regarding relaxation to medical students re an additional examination chance on account of COVID-19.
- vii. 19.11.20 – Record note for the emergent meeting of board of studies, Medicine – Decision regarding additional chances, whether to be given on account of COVID.
- viii. 23.11.2020 – Circular of University of Health Sciences regarding prevailing rules and regulations.
- ix. Directions and Recommendations of the President, PMC in compliance of the order dated 21.09.2020^a

We have carefully gone through the aforementioned documents and are in no manner of doubt that the matter has been seriously and cautiously deliberated upon at all relevant levels and the decision of UHS is the outcome of due application of mind, consideration of all material factors and the powers vested in the UHS by virtue of its statute, rules and regulations.

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9. Nevertheless, pursuant to a letter issued by the Vice Chancellor of UHS, the Governor Punjab showing grace referred the matter to a Board of Studies in which

representatives of a large number of Medical Colleges were present. The issue was re-examined from all angles, the petitioners were heard and it was decided that despite a sympathetic view being taken, it was not possible to make an exception and provide a fifth chance to the petitioners. This was in view of the rules and regulations already in the field since 2008 as noted above which still held the field. Further, the specific issue of Covid-19 Pandemic and its effect on the ability of the students to avail the four chances and specially the last and final chance was discussed. It was found that the Pandemic did not have any impact on the ability of the students to sit in the examination for their fourth and final chance. We have no reason to second guess or overrule the decision of the BoS which based on discussion, deliberation, considering all aspects and after hearing the point of view of the petitioners. We have not found any bias, malafides or violation of the rules and regulations that may have furnished basis and justification for judicial interference. It has further been pointed out that even the President of PMC had earlier specifically and categorically declined interference in the matter and this fact was all along concealed by the petitioners from the High Court. A subsequent change of heart on the part of PMC or one of its Vice Presidents for no apparent reason could not have any significant effect on the outcome of the matter.

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10. As far as the question of maintainability of this petition is concerned, the learned counsel for the Respondents has argued that an ICA was competent in this matter which remedy was not availed by the petitioners. Therefore, this petition is even otherwise maintainable. Suffice it to say that we have heard detailed arguments on merits and consider it unnecessary at this stage to rule on the question of law raised by learned ASC for Respondents. We may examine and rule on this question, in the context of PMC and UHS etc, in an appropriate case in the future.

11. The learned ASC for the petitioners has tried hard to persuade us to treat this as a unique case arising out of extraordinary circumstances. We are however not convinced that we can lawfully read into the law and the rules/regulations something which is not there. We are not convinced that the impugned judgment of the High Court suffers from any legal or jurisdictional defect, error or flaw that may furnish any basis, ground or justification for grant of leave to appeal in this matter.

12. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

Sd/-J

Sd/-J

Certified to be True Copy

ISLAMABAD, THE
8th of July, 2021
ZR/*
Not Approved For Reporting

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